TC01818

Appeal number: TC/2011/01111

Income Tax, Enquiry into Self Assessment Return; whether Return inaccurate; onus of proof; deductions from turnover; adequacy of Appellant's books and records; whether records destroyed by flood; whether deductions claimed actually incurred; appeal dismissed.

FIRST-TIER TRIBUNAL

TAX

JAMES BOAK **Appellant**

- and -

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS **Respondents**

TRIBUNAL JUDGE: **J. GORDON REID Q.C., F.C.I.Arb.**
Member: **S A RAE, LLB., WS**

Sitting in public at George House, 126 George Street, Edinburgh on 11 January 2012

Carl Whittaker JP, Taxation Consultant, Rochdale for the Appellant

Mrs Pauline Carney, Appeals and Review Unit, for the Respondents

DECISION

Introduction

1. This appeal relates to deductions from turnover from the Appellant's profit and loss account for the period between 1/9/04 and 19/9/05. There were two appeals, one against amendments in a Closure Notice, the other against a *discovery* assessment. By earlier Direction of the Tribunal, they were ordered to proceed together.

2. A Hearing took place at Edinburgh on 11 January 2012. Carl Whittaker JP, Taxation Consultant, Rochdale, appeared on behalf of the Appellant, who also attended the Hearing but did not give evidence. Mr Whittaker led no oral evidence. Mrs Pauline Carney of the HMRC Appeals and Review Unit, appeared on behalf of the Respondents (the "Revenue"). She led the evidence of Ian Dunbar, a Higher Officer with the Revenue, and William Paul, another Revenue officer. A bundle of documents including photographs was produced.

The Appeals

3. The Revenue issued a closure notice under s28A Taxes Management Act 1970 on 13 January 2011. It related to the Tax Years ended 5 April 2005 and 5 April 2006. It has since been restricted to the Tax Year ended 5 April 2006. A *Discovery* assessment was issued on 14 April 2011 in relation to the Tax Year ended 5 April 2005.

4. The effect of the Closure Notice (as so restricted) was to increase the Appellant's tax liability by £6,654.80 for the Tax Year ended 5 April 2006. The effect of the Discovery Assessment was to increase the Appellant's tax liability for the Tax Year ended 5 April 2005 by £8,295.18.

5. By letter dated 8 February 2011 to the Revenue, on behalf of the Appellant, Mr Whittaker, appealed against the decision contained in the Closure Notice. The grounds of appeal were, in summary, that (i) the refusal to allow certain costs for labour and materials was unjustified; sales could not have been generated without incurring those costs; and (ii) certain business records of the Appellant had been destroyed in a flood at his business premises. A site visit was proposed. By letter dated 5 May 2011 to the Revenue, Mr Whittaker appealed against the Discovery Assessment. The same grounds of appeal were advanced in the subsequent Notice of Appeal lodged with the Tribunal.

6. At the hearing, neither party addressed us on the requirements for a valid Discovery Assessment under s29 TMA. Both parties appear to have proceeded on the basis that the only issues in dispute related to the deductibility of certain expenses from turnover. They must both have assumed that if the deductions disallowed were not reinstated then the insufficiency of the assessment of tax stated in the return for the Tax Year ended 5 April 2005 was attributable to negligent conduct on the part of the Appellant justifying the discovery assessment. We proceed on that basis for the purposes of this decision.

Procedure

7. Mr Whittaker indicated at the outset that he did not propose to lead any evidence. His position was that the evidence was in the bundle and the issue was a question of interpretation of the evidence. He said he did not disagree with the facts in the bundle. It appeared to the Tribunal that there were or could be significant facts in dispute which might affect the outcome of the appeal. The Tribunal gave Mr Whittaker some encouragement to lead evidence but he declined. Eventually, it was agreed that he should read a prepared Opening Statement (copies of which were then circulated); the Revenue would then lead evidence (if they so wished), and thereafter, Mr Whittaker would be given a final opportunity to lead evidence if he so wished.

8. In the event, Mr Whittaker read out his Opening Statement, Mrs Carney led evidence, but Mr Whittaker declined to lead any evidence, even although he accepted that *the burden of proof rests on the taxpayer*, as he put it in his Opening Statement. Thereafter, parties presented their submissions in the usual way. Mr Whittaker was given the *last word*.

9. The facts are taken largely from the evidence of the Revenue's witnesses, the bundle and to some extent the statements and comments of Mr Whittaker which were not disputed or challenged by the Revenue. We found the Revenue witnesses to be credible and reliable. At the end of the day, although there were evidential conflicts, they were not difficult to resolve.

Facts

The Appellant's Business

10. The Appellant carried on business as an electrical contractor through the medium of JB Electrical (Scotland) Ltd ("JBE"). That company ceased to trade in 2007 leaving PAYE/NIC debts of about £35,000 which remain outstanding. His business was transferred to a new company JBE Building Services Ltd. That company also had, as at March 2011, significant outstanding liabilities for payment of PAYE/NIC for the years 2008/09 and 2009/10.

11. For about a year between September 2004 and September 2005, the Appellant also carried on business as a sole trader. In that capacity, he was the main contractor in a project to refurbish a property at Glasgow, owned by a Mr S Michie. This appeared to be a *one-off* venture for the Appellant as a sole trader. He was not registered for VAT as a sole trader. There is some doubt as to whether the Appellant was the main contractor or acting in a management capacity, as his accountant, Peter Mulholland CA, Eddleston, (the "Appellant's Accountant") stated in a letter to the Revenue on 8 June 2009. Unless the Appellant was the main contractor, it is difficult to see why he was paying various sub-contractors with his own funds or those of JB Electrical (Scotland) Ltd, which he did. In correspondence with Mr Whittaker, Mr Michie indicated, and we accept, that he had appointed the Appellant as *main contractor.*

12. The basis of the contract was *cost plus*, and seems to have been managed and administered by an architect and quantity surveyor. What the level of *plus* (the profit element) was, is unknown. JBE was one of a number of sub-contractors. The project involved roof works, electrical works, plumbing works, building and landscaping works, and drainage works. Mr Michie complained about the quality of the workmanship and did not pay all the sums requested by the Appellant. Mr Michie, however, appears to have been content with the Appellant's administrative abilities. The Appellant produced to Mr Michie, on request, copies of invoices and a breakdown of the labour involved. Photographs produced show parts of the project at various stages of completion. There can be no doubt that the project took place and that considerable sums were paid to sub-contractors.

13. For example, much of the roofing and joinery work was carried out by a Mr Topple but there was no evidence substantiating what was paid to him. Moreover, the evidence before the Tribunal does not enable us to make any detailed findings as to the total amount paid by Mr Michie to the Appellant or the total amount paid by the Appellant to the sub-contractors or any one of them.

14. Mr Dunbar accepted in cross examination that the Revenue sometimes use gross profit rates in various sectors of business as a guideline when considering the reliability and accuracy of accounts and returns. He agreed that a gross profit rate of 20% in the construction industry is generally regarded as acceptable. However, he pointed out that this was the Appellant's first project and a general industry wide rate was not of much value; it would have been necessary to examine a series of similar projects involving a similar combination of trades before any useful guidance on gross profit rates could be obtained. He did not adopt a gross profit percentage approach here. We accept that evidence.

The Appellant's Records

15. The Appellant kept some business records at premises at 28 Grange Loan, Edinburgh. He was tenant there from 14 February 2003 until 31 August 2006. The premises consisted of a small room used as an office. What records the Appellant kept there is unclear. How he stored them, whether on the floor, on a table, in envelopes, in a filing cabinet or by some other means is unclear. He does not appear to have had any other place of business. What books and records, if any, he kept at his home is unknown.

16. No computerised records relating to the Appellant's self-employment were produced. Insofar as there were transfers of sums between the Appellant and his limited company (JBE) in relation to the project (JBE) was involved as a sub-contractor, and one of its employees was identified as having carried out work on the project), these transfers in and out ought to have been recorded in the limited company's records. No such records were produced to the Revenue, in connection with their enquiries, or to the Tribunal, although some of the company's records were examined in relation to a VAT enquiry.

Flooding

17. On or about three occasions during the Appellant's tenancy at Grange Loan, the premises, which had not been insured by the Appellant, were, to an unspecified extent, *flooded*. The problem appears to have been a *backed up toilet* in one of the flats above the premises. Whether the word *flood* gives the correct impression of what occurred cannot be determined on the evidence. The last flood, which led to the Appellant vacating the premises, occurred in about July or August 2006. The Landlord did not pay for or carry out any repair or restoration or refurbishment work. Nor did the Landlord make any insurance claim. The evidence does not enable the Tribunal to conclude what business records relating to the project or to the business of JBE were kept there at the time or lost, damaged or destroyed as a result of the flood, whatever its extent may have been. It does appear, from the terms of a neighbour's letter dated 21 February 2011, that some paperwork and files were damaged. What that paperwork and files related to is unknown.

The Appellant's Tax Returns

18. The Appellant's Self Assessment Return for the Tax Year ended 5 April 2005, submitted on or about 30 January 2006, shows sales of £102,859 [Box 3.29] in respect of an accounting period between 1/9/04 and 19/9/05 [Boxes 3.4 and 3.5]. Costs of Sales are shown at £19,239.55 [Box 3.46] and the entry for Construction Industry [Box 3.47] is £62,391.85. Net profit is shown as £2786 [Box 3.73]

19. The Appellant's Self Assessment Return for the Tax Year ended 5 April 2006 shows sales of £2,145.00 [Box 3.29] in respect of the accounting period between 6/4/05 and 19/9/05 [Boxes 3.4. and 3.5]. Costs of Sales are shown at nil [Box 3.30] and the entry for Construction Industry [Box 3.47] is also blank. The net profit figure [Box 3.73] is the same as the sales figure [£2145].

20. These returns appear to be based in part, at least, on the accounts prepared by the Appellant's Accountant for the period 1/9/04 to 19/9/05. As they straddled two tax years, part of the profit for the project was included in the 2005 return and part in the 2006 return.

The Revenue's Enquiries

21. By letter dated 29 August 2007 to the Appellant, Mr Dunbar opened an enquiry into the Appellant's Tax Return for the year ended 5 April 2006. He requested a variety of information including all books and records to vouch the self-employment income shown in the return. In a letter dated 31 October 2007 to the Revenue, the Appellant's Accountant indicated that he had seen the Appellant who had provided him with some documents. He said that on checking these he realised that the tax return was incorrect and would have to be revised. When the return was prepared, he said that the Appellant had lost *all the information* and he had to prepare accounts from unclear copies of bank statements. He further noted in his letter that in 2006, when the Appellant was transferring to new business premises the Appellant came

across some records including bank statements. No mention was made of a flood destroying or damaging records.

22. Nor was there any mention of a flood in ensuing correspondence emanating from the Appellant's accountant dated 25 March, 3 and 29 September 2008, 16 February 2009. The first mention of the flood appears in the Accountant's letter dated 9 April 2009. That letter provided general information about the project and the sub-contractors who *as far as my client can remember* were involved.

23. There were difficulties in obtaining bank statements relating to the Appellant's personal account with the Royal Bank of Scotland. Eventually, in September 2008, the Appellant gave the Revenue a mandate to obtain his bank statements direct from the bank. However, the bank appears to have ignored it.

24. Further correspondence ensued, the main theme being the Revenue's attempts to obtain information and vouching in relation to the figures in the returns, and, in particular, bank statements and details of the source of various funds identified. By letter dated 8 June 2009 to the Revenue, the Appellant's Accountant agreed that the Appellant's records were not good. According to Mr Dunbar, whose evidence we accept on this point, the Appellant may have been funding the project through his limited company until he subsequently received payment from the employer, Mr Michie. Such arrangements may have added to the difficulty of unravelling the Appellant's affairs as a sole trader.

25. By January 2010, Mr Whittaker was acting (under the name Qdos Consulting Ltd) instead of Mr Mulholland in relation to the Revenue's enquiry. Further correspondence ensued and by early August 2010 agreement had been reached on the sales figure (£84,318) in the accounts for the period 1/9/04 to 19/9/05.

26. In the course of these enquiries, Mr Whittaker, by letter to the Revenue dated 13 August 2010, observed that his client *did keep detailed records which his accountant has confirmed that in other years were perfectly satisfactory… Neither Mr Boak's accountant nor I have reason to believe that the year to 19/9/05 would have been any different to other years and but for the flooding they would have been complete and accurate.*

27. That letter elicited the following response from the Revenue in their reply dated 21 October 2010 (which formed part of the bundle of documents referred to above):-

> "I have to begin by commenting on the credibility of your client as regards his tax affairs over a number of years. Contrary to the view expressed in your letter – that '*..my client did keep detailed records which his accountant has confirmed were in other years perfectly satisfactory…*' – we have invariably found the position to be the opposite. What we have been faced with since at least 2002 is someone who does not appear to have retained books and records as per the requirements of HMRC. In particular Mr Boak and his companies have had a number of VAT visits and on **each** occasion we have found significant inaccuracies, omissions and failures. Those failings have been brought to

Mr Boak's attention at the time of each visit yet when he is next visited the same or similar failings have been discovered.

Back in 2002 we were told that Mr Boak, trading as JB Electrical (Scotland) Ltd was then working from his home because his premises were flooded, but he was hoping to organise new premises shortly. During a full audit in March 2007 the VAT officer attending found various errors and failures, including missing invoices and significant discrepancies between VAT returns and the business SAGE records. The failings were blamed on a previous bookkeeper who by then had left the business. The missing invoices were blamed on yet more flooding at the business premises and the upheaval of moving offices. The net result of the 2007 visit was a VAT assessment of £15,693.

In June 2009 we visited Mr Boak again, this time in relation to his new company JBE Building Services (Scotland) Ltd. By now he ran his business from a portakabin in his garden. Despite the advice given to Mr Boak at earlier visits the visiting officer found himself facing similar failings again. The VAT returns were found to be incorrect with significant tax point errors and under-declared sales. This time it was the fault of the bookkeeper "who had recently left". We were never told whether this was the same bookkeeper who we were told had been dismissed prior to the March 2007 visit. The net result was a VAT assessment of £8,183.

Mr Boak's adherence to the PAYE and CIS regulations has, if anything, been even worse. At the time JB Electrical (Scotland) Ltd ceased to trade the company had PAYE/NIC arrears of approximately £35,000. I note your comments in your letter of 9 June 2010 that Mr Boak .. "had a great deal of time effort and money invested in the company…". As a shareholder and director of his own company that is his choice. What was not his choice was for PAYE and NIC deductions from employees' wages to be withheld. It is the statutory duty of the employment to deduct the tax/NIC and pay it over to the exchequer. The deductions are NOT the company's money and they cannot ever be held back and used for some other purpose, perhaps to ease cash flow problems. Yet that is what Mr Boak did for an extended period. It is also what he has done in subsequent years.

I note that Mr Boak has not submitted an End of Year PAYE return for the year 2008/09. At present there is an unpaid liability for that year of just under £7,000 which might rise should a P35 ever be submitted. Yet again Mr Boak has withheld deductions from wage packets that he as the employer was required by law to make and pay over to the Exchequer.

Mr Boak's operation of the old Construction Industry Scheme (CIS) was also poor. As you have seen from the earlier correspondence with Mr Dunbar your client used sub-contractors yet failed to make the necessary returns to this Department. Mr Dunbar was sent photocopies of 2 CIS25 vouchers that purport to be genuine but which I have serious doubts about. In my opinion if the old

CIS had still been in operation it is almost certain that Mr Boak's failures to operate the CIS properly would have resulted in a separate enquiry"

28. In relation to CIS sub-contractors, the Appellant produced tax payment vouchers for two individuals, namely Grant McNaughton and Scott Murdoch. However, Mr Dunbar's examination of these documents, which he spoke to in evidence, led him to conclude that these were the Revenue's copies, which the Appellant should have submitted, and to conclude that no such vouchers were ever submitted to the Revenue. We accept that conclusion which is supported by his observation, which we also accept, that the Revenue has no record of any CIS25 vouchers (as they are known) having been submitted by the Appellant to the Revenue. Nor was any annual return in relation to CIS payments ever submitted to the Revenue. Deductions of £13,245 and £4955 are claimed in respect of Murdoch and McNaughton but there is no documentary evidence (whether through bank statements or otherwise) of these payments ever having been made under the CIS scheme. Some payments were, however, erroneously (or possibly correctly if they did not operate under the CIS scheme) accounted for under PAYE.

29. On 13 January 2011, the Revenue sent a Closure Notice to the Appellant reflecting their conclusion that the 2005/06 Tax Return should be amended to show a liability to tax of £7,110.60 instead of £455.80.

The difference between the parties

30. In relation to Costs of Sales the Appellant has claimed a deduction of £19,239 in his Return for the year ended 5 April 2005. The Revenue have allowed £6641. The difference is therefore £12,598. The amount in dispute concerns a deduction of £11,981 said to have been paid to Mr Topple, and other costs of £617 i.e. a total of £12,598.

31. In relation to CIS payments, the Appellant has claimed a deduction of £62,391 in his Return for the year ended 5 April 2005. This was subsequently revised down to £43,852. The Revenue have allowed £25,545. The difference is therefore £18,307. The amount in dispute relates to G Stuart £2895, D Kilpatrick £2648, Allied Trade Services £7000, S Baillie £1575 and A Boak £189 i.e. a total of £18,307.

32. None of the foregoing claimed payments to sub-contractors has been vouched. Where an invoice has been produced the Revenue have allowed it as a deductible expense. Thus, the only invoice produced from Mr Topple (dated 10/8/05 in the sum of £4819) has been allowed as a part of the costs of sales even although it cannot be reconciled with such of the bank statements which were made available to the Revenue. The invoice itself is a curious document. It specifies Mr Topple's VAT registration number but otherwise makes no reference to VAT.

33. While the evidence discloses that Allied Trade Services were plumbers and Mr Topple was a roofer/joiner, the nature of the trades of the others is unknown on the evidence. Some may also have been plumbers and joiners. What work they may have carried out on the project cannot be determined on the evidence. The same may

be said for several other CIS sub-contractors namely Messrs Murdoch, McNaughton, Mckenzie, and Ross. Murdoch and McNaughton are said to have received in total over £18,000. Whether their work related to plumbing, joinery or other trades cannot be determined on the evidence.

34. The consequences of those differences and other agreed changes to the Appellant's accounts leads, in the Revenue's assessment, to a revised net profit of £43,402, instead of the returned profit of £4931 i.e. a difference of £38,471. The revised net profit has been split by the Revenue over the two tax years in question by reference to the period of the accounts i.e. 1/9/04 to 19/9/05 (384 days) attributing 217 days to the Tax Year ended 5 April 2005 (£24,527) and 167 days to the Tax Year ended 5 April 2006 (£18,875). The increase for each year is £21,741 [£24,527-£2786] and £16,730 [£18875-£2,145] respectively (see paragraphs 18 and 19 above).

VAT History

35. The Revenue led evidence, under objection as to its relevancy and admissibility by Mr Whittaker, of the VAT record keeping of JB Electrical (Scotland) Ltd ("JBE"). From that evidence the following facts emerge.

36. The Revenue's records identify a report that JBE's premises were flooded in 2002. A Revenue officer, William Paul, visited JBE's premises in 2007 noting that there were *Sage errors.* Sage is an accounting software programme, thus indicating that JBE had some form of computerised accounting system. The officer noted various book-keeping problems but was able to print off some records from Sage covering the period between 1/3/04 and 30/11/06. There were significant discrepancies between sales disclosed in JBE's annual accounts and outputs for the same periods as disclosed in its VAT returns. This led to a Notice of Assessment in the sum of £15,693 issued in June 2007. The assessment was not appealed. The officer's report does not record a flood being mentioned as an explanation for the inadequacies of the records.

37. Mr Dunbar was, throughout his enquiry, unaware of the existence of these Sage records. There is no record of the Appellant, at any stage during the enquiry, offering to produce any such records.

38. Finally, we should add that Mr Dunbar declined the offer of a site visit on the basis that such a visit, long after the Appellant had vacated the premises would be of no value.

Submissions

39. The points advanced by Mr Whittaker in his Opening Statement and concluding submissions may be summarised as follows:- the crucial issue is whether the accounts for the period to 19 September 2005 are accurate, in spite of the absence of some receipts. In particular, (i) the Appellant was expecting to receive a return of 10% of the gross sales less some personal expenses; (ii) labour costs and materials must have been incurred at a level consistent with gross earnings and so such costs should be allowed, even although the sub-contractors can no longer be traced to

provide documentation. The Revenue's analysis gives a gross profit ratio of 52% whereas the norm is 20%; (iii) unidentified transfers disclosed on the Appellant's bank statements (which were not produced) explain the difference between the cost of sales claimed and the cost being allowed by the Revenue; (iv) in relation to CIS payments Allied Trade Services provided all the plumbing services (there was no evidence to support this assertion); significant plumbing works were carried out as the photographs show and the cost of this work was clearly substantial; (v) the Appellant accepts that his record keeping was not of the best irrespective of the flood.

40. Other than suggesting that the Tribunal accept the Appellant's figures, Mr Whittaker did not suggest how we should assess what additional expenses should be taken into account beyond the allowances already made by the Revenue. He invited us to make a pragmatic decision.

41. Mrs. Carney, for the Revenue, began by pointing out that the 2004/05 return was submitted on 30/1/06 which was before the last flood which led to the Appellant leaving the premises. Accordingly, that flood had no bearing on the preparation of that return. She submitted that the letter from the Appellant's Accountants dated 31 October 2007 supports that view; full bank records could and should have been made available. In summary, she submitted that after a lengthy enquiry, it is still unknown what sums were received and what was paid out or for what. The Revenue have allowed what was properly vouched. In the absence of any other acceptable evidence, it would be a stab in the dark allowing any further deductions.

Discussion

42. We agree with Mr Dunbar that no insight can be gained into the transactions of the Appellant in relation to the Project by reference to some general gross profit percentage. We are unable to hold, on the evidence, that the Revenue's conclusions must be wrong. There is no basis for the figure of 10% which Mr Whittaker referred to in the course of the hearing. We know little or nothing of the Appellant's *modus operandi* on the one-off project, what mark-up he charged on materials, what his overheads were and so on. In these circumstances, the Tribunal is unable to conclude, on a balance of probabilities, that the Revenue's conclusions must be wrong or that the figures must be adjusted so as to produce a gross profit ratio (as Mr Whittaker described it) of 10% or 20% or some other figure.

43. While it may be the case that the Appellant incurred more expenses than he can vouch, he has wholly failed to demonstrate how these additional expenses can be calculated. On the evidence, any attempt to do so would be entirely arbitrary. A fair assessment must be based on some acceptable evidence. We cannot begin to deploy even a broad axe to achieve what Mr Whittaker describes as a pragmatic result. The Appellant's failure to persuade the Revenue and this Tribunal that additional expenses should be allowed is largely due to his inability to keep and exhibit adequate business records.

44. In saying that, we recognise that a flood or several floods occurred and one or more may have caused the loss of some records. However, we are doubtful about the

extent of the floods (if that is the correct word to use) and the damage caused, as a flood was not mentioned in the correspondence until a relatively late stage in the enquiry. The information about the flood as disclosed in the bundle was vague and the Appellant declined to give evidence to this Tribunal to give substance and detail to the various assertions made on his behalf in the correspondence. Finally, we add that in our view, it was reasonable for Mr Dunbar to decline a site visit long after the Appellant had vacated the premises. It is difficult to envisage how such a visit could have helped to resolve the dispute about the Appellant's deductible expenses.

45. It is also somewhat surprising that none of the sub-contractors could be traced to provide some evidence or additional documentation to support the Appellant's claims about deductions. The result is a vague collection of general but unsubstantiated assertions about the amounts paid to sub-contractors for labour and materials. In these highly unsatisfactory circumstances, we cannot be satisfied that either the closure notice or the assessment should be varied or discharged. The appeal must therefore be dismissed.

46. We reach our conclusions without taking into account the evidence of the history of poor record keeping and tax debts on the part of the Appellant's companies (as discussed in paragraphs 10, 16, 26-27 and 35-36 above). In the circumstances of this appeal, however, we consider that we would be entitled to take that history into account in assessing the weight to be attached to the explanations for the absence and poor quality of business records.

47. Moreover, the Appellant, in effect, also carried on business through the medium JBE. That company was a sub-contractor on the project and may have financed it or part of it. Well-kept records by that company might have greatly assisted the Appellant's arguments in the present case. Overall, taking into account the evidence of poor record keeping and tax debts on the part of the Appellant's companies would demonstrate a consistency of approach to record keeping (or rather the lack of it) on the part of the Appellant and makes it even harder to accept that the deductions for expenses in dispute were actually incurred.

48. Although we were not favoured with any citation of authority on the point, there is some support for the foregoing view in *Brittain* v *Gibb 1986 59 TC 374 (Vinelot J),* where the court adopted certain observations of Lord Russell of Killowen in *Central Provinces* v *Badridas Ramrai Shop 1937 LR 64 Ind. App. 102 at 115.* His Lordship said in relation to best judgment that *The officer ….must ….be able to take into consideration local knowledge and repute in regard to the assessee's circumstances, and his own knowledge of previous returns by and assessments of the assessee, and all other matters which thinks will assist him in arriving at a fair and proper estimate.*

Result

49. The appeals against the closure notice and the discovery assessment are dismissed.

50. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

J.GORDON REID Q.C., F.C.I.Arb.

TRIBUNAL JUDGE

RELEASE DATE: 10 FEBRUARY 2012